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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1952

No. 182

KENNETH C. GORDON AND KENNETH J. MACLEOD,
PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 7, 1952
CERTIORARI GRANTED OCTOBER 13, 1952

IN THE
Supreme Court of the United States

OCTOBER TERM, 1951.

No.

KENNETH C. GORDON AND KENNETH J. MACLEOD,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

✓

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT.

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TRANSCRIPT OF RECORD

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 10439

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

vs.

KENNETH C. GORDON and KENNETH J. MACLEOD,

Defendants-Appellees.

U. S. C. A.-7

FILED

DEC 1 1951

KENNETH J. GARRICK
CLERK

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.

PRINTED BY CHICAGO LAW PRINTING CO.

TRANSCRIPT OF RECORD FILED SEPT. 5, 1951
PRINTED RECORD

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 10439

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

vs.

KENNETH C. GORDON and KENNETH J. MACLEOD,

Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.

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1 **PLEAS** had at a regular term of the United States District Court for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Room in the City of Chicago in the Division and District aforesaid on the first Monday of June (it being the 4th day thereof) in the Year of Our Lord One Thousand Nine Hundred Fifty-One and of the Independence of the United States of America, the 175th Year

Present: Honorable John P. Barnes, District Judge
 Honorable Philip L. Sullivan, District Judge
 Honorable Michael L. Igoe, District Judge
 Honorable William J. Campbell, District Judge
 Honorable Walter J. La Buy, District Judge
 Honorable William H. Holly, District Judge

Roy H. Johnson, Clerk

Thomas P. O'Donovan Esquire, Marshal

Tuesday, June 19, 1951

Court met pursuant to adjournment

Present: Honorable William J. Campbell, Trial Judge

2 *Statement in Accordance with Rule 10-B of Court
of Appeals*

2

IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 50 CR 641) • •

STATEMENT IN ACCORDANCE WITH RULE 10-B
OF THE COURT OF APPEALS.

1. This action was commenced by the return of indictment on December 1, 1950 by the Grand Jury of the Northern District of Illinois at Chicago, Illinois.

2. The original parties were United States of America v. Kenneth Gordon, Kenneth MacLeod and Albert Swartz.

3. Albert Swartz was dismissed on motion of the Government prior to the trial on May 28, 1951.

4. The defendants Gordon and MacLeod voluntarily surrendered and furnished bail on the indictment in the sum of \$2,500.00 each.

5. The defendants Gordon and MacLeod entered pleas of not guilty on January 16, 1951. The trial began on May 29, 1951 and a verdict of guilty was returned by the jury on June 8, 1951, and judgment and sentence was imposed on June 19, 1951.

The case was tried before the Honorable William J. Campbell, Judge of Northern District of Chicago, Illinois at Chicago, Illinois, and the sentence imposed was ten (10) years each in the custody of the Attorney General of the United States.

6. No questions were referred.

7. Notice of Appeal was filed on June 28, 1951 on behalf of the Defendant-Appellants Gordon and MacLeod, and they are at large on bail in the sum of \$7,500.00 each, fixed by the Court of Appeals.

3

IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 50 CR 641) • •

Be It Remembered, that, on to-wit, the 1st day of December, 1950 the above entitled action was commenced by the filing of the following Indictment, in the office of the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, in words and figures following, to-wit:

4

IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 50 CR 641) • •

The November 1950 Grand Jury charges:

That on or about, to wit, July 20, 1950, at Chicago, Illinois, in the Northern District of Illinois, Eastern Division,

Kenneth C. Gordon,

Kenneth J. MacLeod

and

Albert Swartz,

hereinafter called the defendants, did unlawfully, wilfully and knowingly have in their possession certain goods and chattels, to wit:

11 cartons—116 Kodak Film,

7 cartons—8 mm Kodachrome Roll Film,

1 carton —8 mm Kodachrome Magazine Film and

5 cartons—16 mm Kodachrome Movie Film,

which said goods and chattels had been theretofore unlawfully stolen, taken and carried away from a certain motor vehicle of the Interstate Motor Freight System, a corporation common carrier, on or about, to wit, July 10, 1950, at Chicago, Illinois, while said goods and chattels were moving as part of an interstate shipment of freight from, to wit, Rochester, State of New York, to, to wit, Chicago, State of Illinois, all of which said goods and chattels were then and there in the care, custody, control and possession of the Interstate Motor Freight System, a corporation common carrier.

And the said defendants at the time they had in their possession the said goods and chattels, as aforesaid, in the Northern District of Illinois, Eastern Division, then and there well knew the same to have been stolen: in violation of Section 659, Title 18, United States Code.

4

Indictment

5

COUNT TWO.

The November 1950 Grand Jury charges:
That the defendants,

Kenneth C. Gordon,
Kenneth J. MacLeod
and
Albert Swartz,

on or about, to wit, July 20, 1950, did unlawfully, wilfully and knowingly transport and cause to be transported in interstate commerce, that is, from the City of Chicago, in the State of Illinois, to the City of Detroit, in the State of Michigan, certain merchandise theretofore stolen, that is to say, the merchandise more specifically described and set forth in the first count of this indictment, which said description of said merchandise is incorporated herein by reference as though more fully set forth and made a part hereof, and which said merchandise was then and there of the value of more than \$5000.00, and the said defendants then and there knowing the same to have been stolen at the time the said merchandise was transported as aforesaid: in violation of Section 2314, Title 18, United States Code.

6

COUNT THREE.

The November 1950 Grand Jury further charges:
That the defendants,

Kenneth C. Gordon,
Kenneth J. MacLeod
and

Albert Swartz,

on or about, to wit, July 27, 1950, at Chicago, Illinois, in the Northern District of Illinois, Eastern Division, did unlawfully, wilfully and knowingly have in their possession certain goods and chattels, to wit:

20 cartons—8 mm Kodachrome Roll Film,
which said goods and chattels had been theretofore unlawfully stolen, taken and carried away from a certain motor vehicle of the Interstate Motor Freight System, a corporation common carrier, on or about, to wit, July 10, 1950 at Chicago, Illinois, while said goods and chattels were moving as part of an interstate shipment of freight, from, to wit, Rochester, State of New York, to, to wit, Chicago, State of Illinois, all of which said goods and chattels were then and there in the care, custody, control and possession of the Interstate Motor Freight System, a corporation common carrier.

And the said defendants at the time they had in their possession the said goods and chattels, as aforesaid, in the Northern District of Illinois, Eastern Division, then and there well knew the same to have been stolen: in violation of Section 659, Title 18, United States Code.

7. COUNT FOUR.

**The November 1950 Grand Jury further charges:
That the defendants.**

Kenneth C. Gordon,
Kenneth J. MacLeod
and

Albert Swartz,

on or about, to wit, July 27, 1950, did unlawfully, wilfully and knowingly transport and cause to be transported in interstate commerce, that is, from the City of Chicago, in the State of Illinois, to the City of Detroit, in the State of Michigan, certain merchandise theretofore stolen, that is to say, the merchandise more specifically described and set forth in the third count of this indictment, which said description of said merchandise is incorporated herein by reference as though more fully set forth and made a part hereof, and which said merchandise was then and there of the value of more than \$5000.00, and the said defendants then and there knowing the same to have been stolen at the time the said merchandise was transported as aforesaid: in violation of Section 2314, Title 18, United States Code.

A True Bill:

Edw. G. Keehan

Foreman

Otto Kerner, Jr.

United States Attorney.

8 And afterwards, to wit, on the 16th day of January, 1951, being one of the days of the regular January term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

9

IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 50 CR 641) • •

✓ This day comes the United States by the United States
Attorney come also the defendants Kenneth C. Gordon and
A. Kenneth J. MacLeod in their own proper persons and being

arraigned upon the Indictment filed herein against them plead not guilty thereto and it is

ORDERED that this cause be and the same is hereby set for trial on May 14, 1951.

10 And afterwards, to wit, on the 14th day of May, 1951, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

11

IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 50 CR 641) • •

IT IS ORDERED that this cause be and the same is hereby held on the trial call subject to trial on June 11, 1951 and that this cause be and the same is hereby continued to June 11, 1951 for disposition as to defendant Albert Swartz.

12 And afterwards on, to wit, the 21st day of May, 1951 came the Plaintiff by its attorneys and filed in the Clerk's office of said Court its certain Motion in words and figures following, to wit:

13

IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 50 CR 641) • •

MOTION.

Now comes the United States of America by Otto Kerner, Jr., United States Attorney for the Northern District of Illinois, who upon information is advised that the calendar before the Honorable Michael L. Igoe is in a crowded condition in view of a case which has just commenced and in which it is anticipated the trial will last for some weeks;

It is further represented that the instant case is set for trial before the Honorable Michael L. Igoe on Monday, June 11, 1951; that it is in the interest of justice that the instant case be tried as soon as possible;

It is further represented that the bail in the instant case as to the defendants Gordon and MacLeod is set at \$2500.00, each. It is the opinion of the United States Attorney that bail as to each of the defendants, Gordon and MacLeod should be increased to \$25,000.00.

Now, Therefore, it is respectfully moved that this case be transferred to the Executive Committee of this Honorable Court for reassignment and move that the Executive Committee set the case for trial on the 28th of May, 1951; and further that the said bail as to the defendants Gordon and MacLeod be increased from \$2500.00 to \$25,000.00 each.

Otto Kerner, Jr.

United States Attorney

14 And on the same day, to wit, the 21st day of May, 1951, came the Defendant, Kenneth Gordon by his attorneys and filed in the Clerk's office of said Court his certain Petition For Continuance in words and figures following, to wit:

15

IN THE UNITED STATES DISTRICT COURT
• • (Caption—No. 59 CR 641) • •

PETITION FOR CONTINUANCE.

Now comes the defendant, Kenneth Gordon, and shows unto the Court that this cause is now set for trial on June 11, 1951; that the defendant was arraigned and entered his plea of not guilty herein on January 16, 1951, and that the cause has never been continued on his Motion.

Your petitioner further shows that there is attached hereto and made a part hereof newspaper articles which appeared in various newspapers circulated in the City of Chicago on May 17, 1951; that because of the highly inflammatory and prejudicial nature of the content of said newspaper articles, the petitioner cannot, if this cause is tried at this time, receive a fair and impartial trial.

Your petitioner further shows that since the publication of the aforementioned newspaper articles, the prosecution has served Notice upon counsel for the petitioner of a Motion to advance this cause for trial and to increase the bail of the petitioner; that the arguments to be advanced in sup-

port of said Motions will be predicated upon the events set forth in said newspaper articles; that the publicity which will be attendant upon the hearing of said Motions will further prejudice the cause of your petitioner and his right to a fair trial.

Your petitioner further shows that he has no knowledge or information concerning the events appearing in said newspaper articles and that the Motions of the prosecution are but an attempt on the part of the prosecution to prejudice the cause of petitioner and deprive him of a fair and impartial trial.

16. Wherefore, your petitioner prays that the above entitled cause may be continued to such time as to the Court shall seem meet so that he may not be prejudiced in his trial by reason of the aforementioned newspaper articles and the action of the United States Attorney pursuant thereto.

Kenneth Gordon
Petitioner

State of Illinois)
County of Cook) ss:

Kenneth Gordon, being first duly sworn on oath, deposes and says that he is the petitioner named in the above and foregoing Petition by him subscribed; that he has read the same, knows the contents thereof and that the matters and things therein stated are true in substance and in fact.

Kenneth Gordon

Subscribed and Sworn to before
me this 21st day of May, A.D.
1951.

Loretta Wingerling
(Seal) . Notary Public

17. Chicago Daily News, Thursday, May 17, 1951

SLAY WITNESS IN U.S. CASE
Detroit Jeweler Shot; Accused
With 2 Here in Stolen Film Deal

Albert Schwartz, 43, a Detroit jeweler who was to testify in a federal court trial here next month, was shot to death early Thursday in Detroit.

Schwartz was shot three times. His body was found in the front seat of his auto parked in his garage.

Schwartz was to testify against Kenneth C. Gordon, 28, of 515 Roscoe st., owner of Liberal Jewelers, 21 E. Adams st., and Kenneth J. MacLeod, 37, of 1115 N. Lake Shore dr.

All three men were indicted last December on charges of possessing \$12,000 worth of camera film stolen from an interstate shipment.

Schwartz pleaded guilty last April 10 to his part in the deal.

At the time of Gordon's indictment, Assistant U.S. Attorney Robert J. Downing quoted him as saying:

"If I named everybody whose hot stuff I handled I'd involve every crook in Chicago."

Downing, in charge of prosecuting the case, said Schwartz' testimony would have helped "appreciably," but that his death "doesn't blow up the case."

Downing said he would confer Thursday with U.S. Attorney Otto Kerner Jr. about providing protection for other witnesses.

Detroit jeweler James Erwin Marshall was indicted in that city in the same case.

After he pleaded guilty last Nov. 29, he was shot and wounded. His assailant now is in prison.

Gordon's father Meyer, 56, is serving 20 years for being a receiver of stolen jewelry.

INFORMER KILLED BY THEFT GANG

Detroit, May 17.—(Special)—Albert Swartz, Detroit jeweler who turned informer against two confederates named in a federal indictment in Chicago for theft of camera film in interstate shipment, was found slain early today.

His body, with a bullet wound in the hand and another in his head, was found slumped in the front seat of his car, parked in the garage behind his home.

He had been arraigned Monday in Chicago with Kenneth Gordon, 28, of 515 Roscoe st., owner of a Chicago Loop jewelry store, and Kenneth J. MacLeod, 37, of 1150 Lake Shore dr., owner of a girls' rooming house in Chicago.

The three men's trial was postponed to June 11, said Robert J. Downing, assistant United States attorney, who was reached by Detroit police in his Chicago suburban home.

10 *Newspaper Articles (Attached to Petition)*

Downing said Swartz had offered to testify against his companions at their trial. The prosecutor said another member of the gang, John Mundo, 37, of 7846 Dobson av., Chicago, was sentenced Monday in Ferndale, Mich., for the shooting of James L. Marshall, a jeweler there.

AMBUSH, SLAY JEWELER NAMED IN THEFT CASE

A wholesale jeweler from Detroit, scheduled to testify at a U.S. District court trial here later this week, was shot to death in the Michigan city Thursday, six months after another witness in the case was wounded.

The victim was Albert Schwartz, 43. His body, with two bullets in it, was found in the front seat of his auto parked in his garage.

Asst. Atty. Robert J. Downing of the local office said Schwartz and two Chicagoans were under indictment on a charge of receiving stolen goods. The Chicagoans were Kenneth Gordon, owner of a jewelry store at 21 E. Adams, and Kenneth McLeod, of 1150 Lake Shore.

The stolen goods involved was 127 cartons of film taken July 10 from a motor freight warehouse on the West Side. According to the indictment, Gordon and McLeod sold some of the stolen film to Schwartz and a James Marshall.

Last November Marshall pleaded guilty and shortly thereafter was shot outside his home in Ferndale, a suburb of Detroit. He recovered.

In 1948 Gordon and five other men were indicted as receivers of loot from a daring \$67,000 jewel robbery in Birmingham. A short time before that Gordon's father, Meyer, lost a long court fight to avoid serving 20 years in prison for financing jewel thieves and buying stolen gems from them.

18 And on the same day, to wit, on the 21st day of May, 1951, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

19

IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 50 CR 641) • •

On motion of the United States Attorney it is ORDERED that this cause be and the same is hereby transferred to the Executive Committee of this Court for re-assignment and it is

Further Ordered that motion of the United States Attorney to increase bail and motion of the defendant Kenneth C. Gordon for continuance of trial date be and the same are hereby entered and continued generally.

20 And on the same day, to wit, on the 21st day of May, 1951, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, and Michael L. Igoe, Executive Committee, appears the following entry, to wit:

21

IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 50 CR 641) • •

IT IS ORDERED that the above entitled cause be re-assigned to Judge William J. Campbell and set for trial on May 28th, 1951 at 10 o'clock A. M.

John P. Barnes

Igoe

Executive Committee

Dated May 21, 1951.

22 And afterwards on, to wit, the 23rd day of May, 1951 came the Defendant, Kenneth C. Gordon by his attorneys and filed in the Clerk's office of said Court his certain Motion To Dismiss Indictment, in words and figures following, to wit:

23

IN THE UNITED STATES DISTRICT COURT

• • • (Caption--No. 50 CR 641) • •

MOTION TO DISMISS INDICTMENT.

Now comes the defendant, Kenneth C. Gordon, by George F. Callaghan, his Attorney, and moves to dismiss the indictment, and each count thereof, for the following reasons:

1. The said indictment does not, nor does any count thereof, inform this defendant of the nature and cause of his accusation, with the certainty required by law.

2. The said indictment does not, nor does any count thereof, charge or aver the commission of acts by this defendant, constituting any offense against any statute of the United States with the certainty required by law.

3. The said indictment, and each count thereof, is vague, indefinite and uncertain and, therefore, insufficient, for that the said indictment, or any count thereof, does not sufficiently aver or charge the elements or the supposed crime or offense therein attempted to be charged and it is impossible for this defendant to prepare a defense thereto.

4. The allegations of the indictment, and of each count thereof, are so uncertain and indefinite that they violate the requirements of the Sixth Amendment to the Constitution of the United States of America.

5. Count 1 and Count 3 of the indictment constitute but a single offense.

24 6. Count 2 and Count 4 are duplicitous and void in that they charge the defendant with transporting and causing to be transported in interstate commerce the merchandise described in said Counts.

7. Count 2 and Count 4 fail to charge any offense for the reason that it is not made an offense under Section 2314 of Title 18 to "cause to be transported" stolen merchandise.

Kenneth Gordon, Defendant
By: George F. Callaghan
George F. Callaghan
Attorney for Defendant

25 And on the same day, to wit, on the 23rd day of May, 1951, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William J. Campbell, District Judge, appear the following entries, to wit:

26

IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 50 CR 641) • •

This day comes the United States by the United States Attorney come also the defendants by their counsel and the Court being fully advised it is

ORDERED that the motion of the defendants heretofore entered herein for a continuance of the trial date of this cause be and the same is hereby denied and it is

Further Ordered that leave be and is hereby given the defendants to file motion to dismiss, instanter and that said motion be and is hereby set for hearing on May 28, 1951.

27

IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 50 CR 641) • •

This cause coming on for hearing on the motion of the Government to increase the bonds of the defendants Kenneth C. Gordon and Kenneth J. MacLeod from the sum of Two Thousand Five Hundred Dollars (\$2,500.00) to the sum of Twenty-Five Thousand Dollars (\$25,000.00) each come the parties by their attorneys respectively and the Court having heard the arguments of counsel and being fully advised it is

ORDERED that said motion be and the same is hereby denied.

28 And afterwards on, to wit, the 28th day of May, 1951 came the Defendants Kenneth C. Gordon and Kenneth J. MacLeod by their attorneys and filed in the Clerk's office of said Court their certain Motion in words and figures following, to wit:

29

IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 50 CR 641) • •

MOTION.

Now come Kenneth C. Gordon and Kenneth J. MacLeod, by their attorneys, and move the Court for an Order directing the United States to furnish the particulars regarding the following matters to the Defendants forthwith:

1. How many packages or items were contained in each of the cartons referred to in Counts 1, 2, 3 and 4?
2. What is the manufacturer's price on said items in the quantities in which the particular items were sold?
3. What is the manufacturer's price of each kind of film mentioned in the Counts of the Indictment?
4. What was the manufacturer's price of each kind of film mentioned in the Indictment on the date that it was sold, and on the date that it is alleged to have been stolen?

George F. Callaghan

Maurice J. Walsh

30 And on the same day, to wit, on the 28th day of May, 1951, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William J. Campbell, District Judge, appears the following entries, to wit:

31

IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 50 CR 641) • •

This cause coming on for hearing on the motion of the defendant Kenneth C. Gordon to dismiss, which motion is joined in by the defendant Kenneth J. MacLeod, comes the United States by the United States Attorney come also the defendants in their own proper persons and by their counsel and the Court having heard the arguments of counsel and being fully advised it is

ORDERED that the motion to dismiss be and the same is hereby denied as to each defendant and thereupon this cause came on for hearing on the defendant's motion for a bill of particulars and the Court having heard further arguments and being fully advised it is

Further Ordered that the Government be and it is hereby directed to furnish such particulars as appear in the Official Court Reporter's transcript of this day's hearing and that the motion of the defendants that the Government elect whether it shall proceed on Count 1 or Count 3 of the Indictment be and the same is hereby denied.

32

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 50 CR 641) * *

This cause being called for trial comes the United States by the United States Attorney come also the defendants Kenneth C. Gordon and Kenneth J. MacLeod in their own proper persons and by their counsel and the United States Attorney suggests the death of defendant Albert Swartz therefore on motion of the Government it is

ORDERED that the Indictment herein be and the same is hereby dismissed as to defendant Albert Swartz and the defendants Kenneth C. Gordon and Kenneth J. MacLeod having heretofore interposed pleas of not guilty to the Indictment filed herein against them for their defense put themselves upon the country and it is.

Ordered that a Jury come whereupon come a Jury of twelve good and lawful men and women, to-wit:

Ruth E. Fritz

Anna A. Colditz

Samuel H. Newman

Joseph Gill

Norma E. Reszel

Emma I. Dreher

Raymond C. Eagan

Helen M. Lyman

Robert R. Harmer

Betty Vawter

Ida Potts

Edith Siegel

who were duly elected, empaneled and sworn well and truly to try the issues joined herein and a true deliverance to make between the United States of America, Plaintiff, and Kenneth C. Gordon and Kenneth J. MacLeod, defendants and a true verdict to render according to the law and evidence and it appearing to the Court that the trial of this cause is likely to be a protracted one it is.

Ordered that one additional Juror to be known as an Alternate Juror be empaneled and sworn at this time whereupon comes Eleanore Y. Weiss who is duly elected, empaneled and sworn as an Alternate Juror well and truly to try the issues joined herein and a true deliverance to make between the United States of America, plaintiff, and Kenneth C. Gordon and Kenneth J. MacLeod, defendants, and a true verdict to render according to the law and evidence and trial of this cause proceeds and the hour of adjournment having arrived it is

Ordered that the Jury and Alternate Juror be permitted to separate until 10:00 o'clock A. M. May 29, 1951.

33 And afterwards on, to wit, the 29th day of May, 1951 there was filed in the Clerk's office of said Court a certain Government's Response To Motion For Bill Of Particulars, in words and figures following, to wit:

34

Type	Quantity Per Carton	Omit	Retail Price Carton
#116 Verichrome Kodak Film	300 rolls	.49	147.00
# 8mm Kodachrome Magazine	50 magazines	5.05 per mag.	252.50
# 8mm Kodachrome Roll	100 rolls	4.10	410.00
# 16mm Comm. Kodachrome Film	50-100 ft. rolls	.0735 ft.	367.50

35 And on the same day, to wit, on the 29th day of May, 1951, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William J. Campbell, District Judge, appears the following entry, to wit:

36

IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 50 CR 641) • •

This being the day to which this cause was continued for further trial again comes the United States by the United States Attorney come also the defendants in their own proper persons and by their counsel and enter herein their motion to withdraw a Juror and declare a mis-trial and the Court being fully advised said motion is denied and the

Jury and Alternate Juror heretofore elected, empaneled and sworn herein for the trial of this cause also come and trial of this cause proceeds and during the examination of witnesses on behalf of the United States the hour of adjournment having arrived it is

ORDERED that the Jury and Alternate Juror be permitted to separate until 10:00 o'clock A. M. May 31, 1951.

37 And afterwards, to wit, on the 31st day of May, 1951, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William J. Campbell, District Judge, appears the following entry, to wit:

38

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 50 CR 641) * *

This being the day to which this cause was continued for further trial again comes the United States by the United States Attorney, come also the defendants in their own proper persons and by their counsel and enter herein their motion to withdraw a Juror and declare a mis-trial which motion is denied and the Jury and Alternate Juror heretofore elected, empaneled and sworn herein for the trial of this cause also come and trial of this cause proceeds and during the further examination of witnesses on behalf of the United States the hour of adjournment having arrived it is

ORDERED that the Jury and Alternate Juror be permitted to separate until 10:00 o'clock A. M. June 1, 1951.

38 And afterwards on, to wit, the 19th day of July, 1951 there were filed in the Clerk's office of said Court two certain Volumes Of Transcript Of Proceedings Had On May 28, 29, 31, June 1, 4, 5, 6 and 7, 1951, before the Honorable William J. Campbell, Judge in words and figures following, to wit:

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 50 CR 641) * *

TRANSCRIPT OF PROCEEDINGS

39 Transcript of Proceedings had and evidence taken on the trial of the above-entitled case before the Hon-

orable William J. Campbell, one of the Judges of said Court, and a jury, in his court room, U. S. Court House, Chicago, Illinois, on Monday, May 28th, 1951, at 2:00 o'clock p. m.

Present:

Hon. Otto Kerner, Jr.,
U. S. District Attorney,
by Robert J. Downing,
Assistant U. S. Attorney,
on behalf of Government;
Mr. George F. Callaghan,
appeared on behalf of
defendant Gordon;
Mr. Maurice J. Walsh,
appeared on behalf of
defendant MacLeod.

40 The Court: Gentlemen, I understand the jury now in the box is satisfactory to both sides. That is as to the main panel, is that correct?

Mr. Downing: That is correct.

The Court: For the defendants?

Mr. Callaghan: Yes.

Mr. Walsh: Yes.

The Court: Your defendant?

Mr. Walsh: Yes.

The Court: Very well. Let the record so show.

The jury may rise and be sworn.

(Thereupon the twelve jurors were sworn to try the issues.)

The Court: We will take a recess of ten minutes so the jury can be escorted to their quarters.

I would like during this recess to speak to counsel in chambers about the matter of alternates. Will you step in chambers, Gentlemen?

(And thereupon proceedings were had in chambers between court and counsel, not reported, following which the additional proceedings were had in the court room:)

The Court: It having been agreed between counsel that one alternate will be selected, in view of the possible protracted nature of the trial, you have now selected
41 that alternate, have you, Gentlemen?

Mr. Downing: Yes, your Honor.

The Court: She is satisfactory to both sides?

Mr. Walsh: Yes.

The Court: Both defendants?

Mr. Callaghan: Yes.

The Court: You may rise and be sworn as an alternate juror.

(And thereupon the alternate juror was sworn.)

The Court: Step into the jury room with the others, please, and then you can arrange a chair. Your chair will be over on the far side. I think we will put one in there over against the pillar.

(And thereupon the alternate juror retired to the jury room, and the following proceedings were had in the court room out of the hearing and presence of the entire jury.)

Mr. Downing: Let the record show that at the request of the defendants this morning this has been supplied to them this noon.

The Court: Yes.

Mr. Downing: The Government has supplied to Mr. Walsh and to Mr. Callaghan a list, penciled list containing the description of the type of film cartons, the quantity in the carton and the unit and the carton retail price.

Mr. Walsh: We object that it does not satisfy the request we made, but I believe it does satisfy your Honor's order.

The Court: Yes. It complies with such as I said they should furnish.

Mr. Walsh: They have furnished it with a retail price.

The Court: Yes. That is what I directed them to. They said that was the only price they had.

Mr. Walsh: Do I understand that this is the price upon which the Government will rely for its proof in the case? That would be the purpose of the bill of particulars.

The Court: This is what you are going to introduce?

Mr. Downing: This is what we are going to introduce.

The Court: Very well. Whatever you want to introduce in the form of evidence we will hear. If there are any motions at the end of all the evidence, I will pass on that at that time.

Are you ready to go ahead with the opening statement?

Mr. Downing: Yes, your Honor.

53 The Court: Bring in the jurors, please, Mr. Marshal.
Mr. Callaghan: May it please your Honor, in this morning's Tribune the following story appears:

"A jury of eight women and four men was selected yesterday before Federal Judge William J. Campbell in the trial of Kenneth Gordon, 28, of 515 Roscoe st., and Kenneth MacLeod, 37, 1150 N. Lake Shore dr., charged with possessing \$12,000 in stolen camera film.

"The trial was advanced two weeks ahead of its scheduled opening at the Government's request after Albert Swartz, 43, a Ferndale, Mich., jeweler who had pleaded guilty to the same charge and was scheduled to testify against Gordon and MacLeod, was slain May 17 in gangland fashion outside his home. James I. Marshall, 29, a Ferndale jeweler who was wounded in a similar attack last Nov. 20, has been under guard since Swartz' death.

"Government attorneys charged Gordon and MacLeod sold the film to Swartz and Marshall after it was stolen from a truck parked at 1833 S. Canal st. last July 20. The loot was part of a shipment valued at \$27,423, consigned from the Eastman Kodak Company, Rochester, N. Y., to its Chicago branch office."

54 Now, on the appearance of that article, and I assume there have been similar articles in other morning papers, but the defendants now move this Court to withdraw a juror and declare a mistrial on account we cannot have a fair and impartial trial by this jury.

The Court: Motion denied.

Mr. Callaghan: May I merely make this as a part of the record?

The Court: File it in writing and attach it as an exhibit at any time during the day.

Mr. Walsh: Yesterday we made a motion for a bill of particulars. Mr. Downing furnished me with this penciled written slip of paper yesterday, showing certain prices. I would like to have leave to make this a part of the record, showing what he has furnished us.

The Court: You may so do. What do you mean you want?

Mr. Walsh: Just let him copy these figures as being the ones furnished in response to our request for a bill of particulars.

The Court: There is no question but what those are the only ones furnished. Mark it as an exhibit, if you want to. You can retain it as part of the record of the case and file it as an exhibit. Just file the exhibit. It would not go to the jury, of course.

Mr. Walsh: It is part of the pleadings.

The Court: Let it be filed here, and bring in the jury.

55 (The following proceedings were had in the presence and hearing of the jury in the court room:)

Thereupon, The Government, To Maintain The Issues On Its Part, Introduced The Following Evidence, To-Wit:

CHARLES H. VAYO, called as a witness on behalf of the Government herein, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Downing:

Q. Will you state your name, please?

A. Charles H. Vayo.

Q. What is your business address, Mr. Vayo?

A. 343 State street, Rochester, New York.

Q. By what company are you employed?

A. Eastman Kodak Company.

Q. How long have you been employed by that company?

A. Thirty-eight years.

Q. What is your present position?

A. I am General Traffic Manager of the Kodak Company and all its subsidiary companies.

Q. For how long have you held such a position?

A. Oh, approximately fifteen years.

56 Q. Will you describe briefly, for the court and jury, the nature of your duties?

A. Well, I have charge of the purchase of all transportation for all of our companies and included in that is all of the shipping operations throughout the world.

Q. Now, in connection with your duties as General Traffic Manager for the Eastman Kodak Company, are you acquainted with the books and records of that company?

A. I am.

Q. I now show you an exhibit which has been marked as Government's Exhibit 67 for identification, and ask you to look at it and ask you if you have seen it before?

A. Yes, I have.

Q. I will ask you if that document is a record of the Eastman Kodak Company?

A. Yes, it is.

Q. I ask you with respect to that document, if it was prepared under your jurisdiction and supervision, in the regular course of business on or about the date the document bears, which is July 8, 1950?

A. It was.

Q. Was it the regular course of business to prepare such a document on or about that date?

A. It was.

Q. Directing your attention to the name of C. H. Vayo, appearing thereon, I will ask you if that is your name?

57 A. That is correct.

Q. Do you recall if this is the same impression of your name?

A. A facsimile of my signature.

Q. Was that placed thereon by an authorized employee, under your supervision and direction in the regular course of business?

Mr. Callaghan: That is objected to unless he was present at the time it was done.

The Court: Overruled.

By The Witness:

A. Yes.

By Mr. Downing:

Q. Will you describe briefly to the Court and jury what that document represents?

Mr. Walsh: I object to that. The document will speak for itself, your Honor, I assume.

The Court: He may briefly describe what the document is. Do not read it in detail.

By The Witness:

A. The document is a contract between the Eastman Kodak Company and the carrier, in this case the Interstate Motor Freight Lines.

Q. Was that document in your custody and control until it was turned over by you to the United States District Court in Detroit, Michigan?

58 A. Yes, it was.

Q. I now show you two exhibits marked Government's Exhibits 68 and 69, marked for identification, and ask you to look at those and ask you if those are the type of seals used by the Eastman Kodak Company?

Mr. Callaghan: I object to counsel leading this witness repeatedly. Let the witness testify.

The Court: It is more or less pro forma. I will permit the question to stand.

By The Witness:

A. They are the type of seals that we used.

By Mr. Downing:

Q. Now, in connection with what business did your company use those seals?

A. What was the question?

Q. In connection with what type of business did your company use those seals?

A. They are used in connection with the sealing of trucks and freight cars.

Q. With respect to those seals, Government's Exhibits 68 and 69, marked for identification, what relationship if any, is there between those and the exhibits which I have just previously shown on Government's Exhibit 67 marked for identification?

59 A. These are the seals that we use on the trucks as indicated by this bill of lading.

Q. By the bill of lading, you are referring to Government's Exhibit 67?

Mr. Callaghan: All the witness can possibly testify to that is the same numbers perhaps correspond. He is not competent to testify that these are the seals that are used, and so on. He had nothing to do with the placing of those seals or affixing them to any carrier.

The Court: Overruled.

Mr. Downing: Was the question answered?

The Court: Yes.

By Mr. Downing:

Q. Directing your attention to Government's Exhibit 76, marked for identification, I ask you to look at that and ask you if that is a record of the Eastman Kodak Company?

A. Yes, it is.

Q. And ask you with respect to that record whether that was prepared under your jurisdiction and supervision in the regular course of business on or about the date the document bears, July 8, 1950?

Mr. Callaghan: I submit that the witness ought to be required to testify how it was prepared and then we can reach that conclusion.

60 The Court: Overruled. I will let him answer.

By The Witness:

A. Yes, it was prepared.

By Mr. Downing:

Q. Was it the regular course of business to prepare such records at that time?

A. It was.

Q. Now, after the record there, Government's Exhibit 76 was prepared, if you know, what distribution was made of that document?

Mr. Walsh: I object to the question. As I understand it, as to what distribution is made—

The Court: Was made of this document.

Mr. Downing: Was made of this document.

The Court: Overruled. He may answer.

By The Witness:

A. A copy of this record was forwarded at the time the shipment was made. This particular copy was held in Rochester. In other words, it is a duplicate.

By Mr. Downing:

Q. Is such record, a copy of such record, forwarded to your branch?

A. A copy of such record was forwarded to the Eastman Kodak Company in Chicago.

61 Q. Without referring to the contents of that record, will you describe briefly what that document reveals?

A. This refers to a shipment of six cases of Kodochrome commercial film, emulsion 5268-176.

Mr. Callaghan: Was that emulsion—

A. That is emulsion number 5268-176.

By Mr. Walsh:

Q. That is emulsion number 5268-176?

Mr. Downing: 5268-176.

By Mr. Downing:

Q. With respect to the document, what, if any, relationship is there between that document and the document that you first identified, Government's Exhibit 67?

A. This?

Q. Yes, the bill of lading that you identified.

A. This is, this one here shows—

Mr. Callaghan: "This one here", you refer to 67?

The Witness: I refer to 67, the bill of lading, shows the shipment by case numbers of 355, 56, 57, 58, 59 and 60. In other words, the items covered by this particular document are shown on the bill of lading.

By Mr. Downing:

Q. By the particular document, you are referring to Government's Exhibit 76?

A. Yes, that is right.

Q. So those case numbers that you have just itemized, are they listed on the document, Government's Exhibit 76 there? That is this document here?

A. Yes, they are.

Q. Are they in the first column there to the left hand side of that document? Is that where the case numbers are?

A. The case numbers 55, 56, 57, 58, 359 and 360.

Q. Now, in connection with your duties, are you acquainted with the type of carton used by the Eastman Kodak Company in shipping film?

A. Yes, I am.

Q. Directing your attention to a carton identified as Government's Exhibit 1, marked for identification, I ask you to look at that and ask you if you recognize that to be a type of carton of the Eastman Kodak Company?

A. Yes. It is the regular Kodak carton.

Q. Directing your attention to Government's Exhibit 1, that is the carton which I have just shown you, was that included in the shipment which is evidenced by Government's Exhibit 67?

Mr. Callaghan: That is objected to, if your Honor please.

63. The Court: On what ground?

Mr. Callaghan: On the ground he is not competent to so testify, not having personal knowledge of the subject-matter.

The Court: Objection overruled.

Mr. Callaghan: He perhaps could show that by reason of documents or some other conclusion he reaches and by the same mental process, they may say he is competent to testify, but he is not competent to testify it was a part of this shipment.

The Court: Objection overruled.

Mr. Walsh: I might suggest, further, your Honor, on the same objection, that I think a man who handles or is in charge of their transportation all over the world is a little too big to be familiar with the details to which he is testifying. He says they are under his general jurisdiction, but obviously not under his immediate supervision, so that he could have a knowledge of the specific persons, but if he could tell us the name of the person of his own knowledge—

The Court: Are you making an objection?

Mr. Walsh: Yes.

The Court: Overruled.

64 Mr. Downing: Will you read the question?

(The last question was read by the Reporter, as recorded above.)

By Mr. Downing:

Q. Will you explain to the court and jury the basis for your answer, please?

A. This is number 356.

Q. By that, are you referring to some number on the exhibit?

A. 356 is the case number.

Q. By that you are referring to a number on Government's Exhibit 1?

A. On the bill of lading.

Q. Yes?

A. It is further identified by the emulsion number 5268-176-0515. Now—

Q. Go ahead and explain.

A. Explain the emulsion number in process?

Q. Please.

A. 5268 indicates the type of film, that is, whether it is black and white or colored or what have you.

176 is the emulsion number and the first two digits of the last number, 0515, 05 indicates the large roll from which this film was cut. 15 indicates the packer.

65 Q. From your knowledge of the records of the company, the film of that emulsion number included in this shipment, evidenced by Government's Exhibit 67, this bill of lading?

A. Yes. That particular lot of film was special emulsion made for the professional motion picture film industry. A number of rolls were shipped to New York and Chicago.

Mr. Callaghan: I object to this, if your Honor please.

The Court: Overruled. The answer may stand.

By Mr. Downing:

Q. With respect to the quantity shipped to New York, that you have mentioned, what, if anything, has happened to that, to your knowledge?

A. The film that was shipped to New York, according to my records—

Mr. Callaghan: I object to his testifying.

The Court: What is the materiality of what was shipped to New York?

Mr. Downing: I just want to show that film then was recalled and the only film with that emulsion number was in this particular shipment.

The Court: Very well. He may answer.

By The Witness:

66 A. The film shipped to New York was recalled and which left the only available film on this particular truck to Chicago.

Mr. Walsh: I object and move to strike the answer, unless he has testified to something of his own personal knowledge, if he recalled it. He is talking about something but he is apparently telling us and we don't know whether he knows it or not. It has not been established.

By Mr. Downing:

Q. Are you acquainted with those facts of your own knowledge?

A. Yes, sir.

The Court: Objection overruled.

By Mr. Downing:

Q. That emulsion number that you have just referred to, both on Government's Exhibit 1, the carton marked for identification, about which you have testified, is the number that is referred to on this exhibit as 76, marked for identification?

A. Correct.

Q. Directing your attention to the printed inscription appearing on the side of Government's Exhibit 1, marked for identification, what, if you know, does that print-
67 ing represent?

A. It represents the kind of film and the contents of that particular container or carton.

Q. Is it the general practice of the Eastman Kodak Company to print on each of their cartons such inscription describing the type of film and the quantity in each carton?

A. That is right.

Q. Now, from your inspection of Government's Exhibit 1 I have just shown you, will you look at it and determine whether or not this exhibit has heretofore been opened, once it has been packed and shipped?

A. There is no indication it has ever been opened.

Q. I ask you to open that in the court room, if you will please, Mr. Vayo.

A. It will take a strong man to do it. (Witness opening the carton.)

Q. That is sufficient.

1 Mr. Downing: Let the record show that the witness is opening the carton, Government's Exhibit 1 in the court room:

The Court: Very well. Let the record show.

By Mr. Downing:

Q. I ask you to look at the contents on the inside of 68 that exhibit, Mr. Vayo.

Are you able, after examining the contents, to determine by inspection if the contents of that exhibit, Government's Exhibit 1, marked for identification, is that of the same type of film as described on the outside of the box which you have previously referred to?

A. It is.

Q. Does the box contain fifty rolls of 100 foot 16 millimeter Kodochrome film?

A. It does.

Q. By inspection of the contents of the box, I ask you if you are able to determine and advise the court and jury if the contents is produced from emulsion number 5268-176, about which you have previously testified?

A. Yes, it is.

Q. Will you explain to the court and jury the basis for your answer?

A. Well, the cartons are marked with the emulsion 5268-176-0515, which is the emulsion number that we referred to.

Q. And each of the cartons on the inside of that exhibit, Government's Exhibit 1; are so marked, is that right?

A. That is right.

69 Q. Now, I show you exhibits which are identified as Government's Exhibits 2, 3, 4, 5 and 65, and ask you to look at those cartons and ask you if you recognize those to be cartons of the Eastman Kodak Company?

A. They are.

Q. Now, from the inspection of those cartons, I ask you if you are able to determine, as you previously explained in Government's Exhibit 1, if those cartons were included in the shipment evidenced by Government's Exhibit 67, marked for identification?

Mr. Walsh: I object on the ground stated. He is reciting a record that apparently is going to be introduced.

The Court: Your objection may be noted, and it is overruled.

Mr. Downing: Will you read the question?

(Last question read, as recorded above.)

By The Witness:

A. Yes.

Q. Now, at the time these cartons were shipped, according to your records, what type and quantity of film did each of these cartons contain?

A. Each carton contained 50 rolls of what is known as commercial Kodochrome film.

70 Q. That is, of 16 millimeter?

A. 16 millimeter.

Q. Now, directing your attention to Government's Exhibit 66, marked for identification, I will ask you to look at that and ask you if you recognize that as a product of Eastman Kodak Company?

A. Yes, it is.

Q. From an inspection of the box of film that you have before you, Government's Exhibit 66, are you able to determine that this was included in one of the cartons which I have just shown to you, Government's Exhibits 2 to 5, or Government's Exhibit 65?

A. Yes, it was.

Q. Your answer is yes?

A. Yes.

Q. Now, will you explain your answer?

A. Well, this particular carton that you have handed me has emulsion number 5268-1768515, which is the emulsion number of the film in these particular cases.

Q. And that is the carton, Government's Exhibit 66, which I have just shown you?

A. Yes.

Q. But you cannot identify at the present time which one of these cartons contained that box, which is Government's Exhibit 2 to 5?

71 A. This particular one?

Q. Yes.

A. No, I cannot.

Q. Mr. Vayo, I now show you a group of cartons, commencing with Government's Exhibits 6 to 16; I am handing you Government's Exhibit 6, which is marked for identification, and ask you to look at that, and then if you would

step down and look at the balance of these exhibits here, please.

A. Yes.

Q. Then would you look at the balance of these, marked Government's Exhibits 17 to 63?

A. Yes.

Mr. Callaghan: What is that, 6 to 16?

Mr. Downing: Yes, and this is 17 to 63.

Mr. Callaghan: 17 to 63?

Mr. Downing: Yes, 17 to 63.

Q. And would you take the witness-stand again, please? Now, after looking at these exhibits, which you have just inspected, do you recognize these to be cartons of the Eastman Kodak Company?

A. I do.

Q. And are these the type of cartons used by the Eastman Kodak Company in shipping film from their factory at Rochester to the various branches?

A. Various domestic branches, yes.

Q. And do each of the cartons that you have looked at contain a description of the type of film which are contained therein?

A. Yes, they do.

Q. From an inspection of this carton, are you able to determine whether the film of the type described thereon was included in the shipment evidenced by the bill of lading, Government's Exhibit 67?

Mr. Walsh: That is objected to, if your Honor please, on the ground that it has not been shown here that these cartons bear the numbers that appear on that document.

The Court: Overruled.

By The Witness:

A. All these various types of film were included in this particular shipment.

By Mr. Downing:

Q. Directing your attention to Government's Exhibit 64, marked for identification, I ask you to look at that, and ask you to inspect the contents in that exhibit, please.

Mr. Walsh: What number is that?

Mr. Downing: 64.

By The Witness:

A. Yes.

By Mr. Downing:

Q. And do you recognize that exhibit to contain the film of the Eastman Kodak Company?

A. Yes, I do.

Q. From an inspection of this exhibit in your records, are you able to determine that film of this type was included in the shipment by Government's Exhibit 67?

Mr. Callaghan: The same objection as to a similar question.

The Court: The same ruling.

By The Witness:

A. Yes, it was.

By Mr. Downing:

Q. Now, in the regular course of your duties, Mr. Vayo, are you acquainted with the quantity of film packaged in the shipping cartons, the exhibits which you have just identified here in the court room?

A. Yes.

Q. Are you also acquainted with the retail value of the various types of film that is manufactured and sold by the Eastman Kodak Company?

74 Q. Do you have with you the retail value of a carton of 16 millimeter Kodachrome commercial film?

A. Yes, I have.

Q. Do you have your records with you?

A. May I refer to my notes?

Mr. Downing: May he have permission to refer to his notes?

The Court: Yes, yes, he may.

The Witness: What is the particular film?

Mr. Walsh: Just a minute, now. What is the question?

By Mr. Downing:

Q. Do you have the retail value of the carton of 16 millimeter commercial Kodachrome commercial film?

Mr. Callaghan: Hasn't he answered that?

Mr. Downing: He says he has it.

Mr. Callaghan: He wants to refer to his notes.

Mr. Walsh: Then there is no question pending now?

The Witness: Yes.

Mr. Callaghan: I object, if he is going to read some values, I object to that stuff, whether he has it with him or not.

The Court: He may use the notes to refresh his recollection and then testify.

75 Mr. Downing: And then testify as to the value.

The Court: As to the retail value, on the question that he was asked.

Mr. Callaghan: Now, I object to that, your Honor, on the ground that there is no showing that this film was ever in the retail market, and that is not an issue in this case at all. This is a shipment of film from the Eastman Kodak Company to an Eastman Kodak Company branch, and it never arrived in the retail market.

The Court: The objection is overruled.

Mr. Callaghan: I submit there is a further objection, if your Honor please, he is referring to notes, without any showing as to when those notes were prepared, by whom they were made, or when they were prepared, or any other foundation that is required.

The Court: I think that objection is valid, and I will sustain it. You will have to qualify him.

By Mr. Downing:

Q. With respect to the notes that you have in front of you, are those notes which have been prepared under your supervision—

Mr. Callaghan: I submit, if your Honor please, 76 he should not lead the witness, let him testify as to how the notes were made.

The Court: Testify as to what the notes are.

The Witness: The notes, the values that I have per case were arrived at by means of using the prices taken from our regular price list, prices in effect on July 8th or thereabouts, 1950.

By Mr. Downing:

Q. Do you have that price book with you?

Mr. Callaghan: I submit the best evidence is the price list.

The Court: Let him use his notes, and he will probably come to it.

Q. Do you have a price list in front of you there?

A. Yes, I have.

Q. And was that the basis upon which you arrived at the computation of the price per carton?

A. That is correct.

Q. Now, what is the price per carton of the retail value of 16 millimeter commercial Kodachrome film in July, 1950?

Mr. Walsh: I object to that, if he is going to tell us

what is in a document which sets out the price that the Eastman Kodak Company charged, I submit we should have the document and the benefit of prices at all levels.

The Court: I will permit him to look at the document, and in the meantime, I will permit him to answer the question, and if, after referring to his notes, you want to look at that price list afterward, you may look at it.

Mr. Walsh: Furthermore, there is no showing that anyone has ever paid the prices for any of this film. If he is going to talk about market value—

The Court: Are you making a further objection?

Mr. Walsh: Yes, your Honor.

The Court: That is also overruled.

Mr. Walsh: The market value that he is going to testify to now is July 8th, so he says, is on the list, the retail list, which previously he says were prices that the Eastman Kodak Company assumed the retailers would obtain, but not the prices that the Eastman Kodak Company were going to obtain.

The Court: Yes, you have previously said that, and I have overruled your objection.

By Mr. Downing:

Q. And this price you have given, is that the price that was in effect throughout the month of July, 1950?

A. As a matter of fact, it was in effect for six months after July.

Q. Subsequent to July, 1950?

A. Yes.

Q. What is the price of one carton of 16 millimeter commercial Kodachrome film?

A. \$367.50.

Q. Now, how many boxes are there in a carton, of the type, of that type of film?

A. You mean how many rolls?

Q. Rolls.

A. There are fifty rolls to the case.

Q. Is that film also known as movie film?

A. Well, it is the type of film used in the professional movie field; it is a 16 millimeter type of film.

Q. Now, do you have the retail value of a carton, one carton of 116 Verichrome Kodak film?

Mr. Walsh: The same objection may be recorded to each of these questions, if your Honor please?

The Court: Yes, and the record will also show the same ruling.

By Mr. Downing:

Q. What is that price?

A. On the 116 Verichrome, the cost is \$147.

Q. How many rolls a carton?

79 A. There are 300 rolls a case, or carton.

Q. Now, do you have the retail value of one carton of 8 millimeter Kodachrome roll film?

A. What length 8 millimeter did you say?

Q. Which is a 25 foot—

A. Are you talking about magazine roll?

Q. No, roll, roll type.

A. I gave you a price of \$410 on a 25 foot 8 millimeter Kodachrome, if that is the one you are talking about.

Q. That is the one.

A. \$410 a case.

Q. How many rolls are there a case in that?

A. There are 100.

Q. Now, do you have the retail value of a carton of 8 millimeter Kodachrome magazine type of film?

A. That price is \$252.50.

Q. And how many magazines to a case?

A. Fifty in that particular type.

Mr. Downing: You may cross examine.

The Court: I think we will take the morning recess before you do that. Ten-minute recess.

(Recess)

The Court: Cross examination on behalf of the defendant Gordon.

By Mr. Callaghan:

Q. Did the cartons which have been identified here as Government's Exhibits 6 to 16, inclusive, for identification have on the outside thereof the emulsion number?

A. I believe they have.

Q. And so the jury may know what the emulsion number is, will you explain that to us briefly, what you mean by the emulsion number?

A. The emulsion number is, as I explained previously, you have a series of numbers. The first number indicates the type of emulsion, whether it is an emulsion used in the manufacture of black-and-white film or colored film.

Q. What do you mean by emulsion, that is what I want you to explain to the jury.

A. That is a photographic emulsion which goes over the celluloid, so to speak, that has photographic qualities, such as the silver and other qualities which enables you to get a picture.

Q. That is the bath in which the paper, the celluloid, is it acetate or acetate?

A. It could be acetate or it could be nitrate.

Q. The acetate, that is the bath in which the acetate material of which the film is to be made is run through that as it goes on the rollers to be cut?

A. No, it is not a bath at all. It is a coating.

81 Q. Well, an emulsion is a mixture in a large vat, through which this substance was run to get the coating?

A. No, it doesn't work that way at all.

Q. No.

A. The celluloid, so to speak, goes over certain rollers, and the emulsion is applied as the rollers go through it, the solvents evaporate and it becomes a solid substance.

Q. Then, briefly, the emulsion is the substance that is sprayed on, or in some means applied to the thing that eventually becomes film?

A. Yes, that is the photographic quality.

Q. Your silver bromide or silver nitrates may be applied to the substance in—

A. It is already in the emulsion.

Q. And in each emulsion—each emulsion has a number, does it not, so that you may keep track in the manufacture of the film what film, by designating each batch of film with the emulsion number?

A. That is right.

Q. Now, do you know how many rolls, or if you wish to give it by cartons, cartons of film were made out of emulsion No. 5268-176?

A. Yes, I do.

82 Q. How many?

A. May I refer to my notes?

Q. Yes.

The Court: You may.

By The Witness:

A. In that particular batch, there were 368 100-foot rolls made.

Q. What was that again, 368?

A. 368.

Q. Rolls?

A. Rolls, 100-foot rolls.

Q. Of what kind of film?

A. 16 millimeter Kodachrome commercial film.

Q. 16 millimeter Kodachrome commercial?

A. That is right.

Q. How many rolls of 16 millimeter Kodachrome commercial film were included in the shipment of July 8th, 1950, have you any independent recollection of that, Mr. Witness, or would you like to look at this exhibit?

A. No, I think I can refer to my notes here.

Q. Well, without looking at those notes, will you look at Government's Exhibit 67 for identification? The question is limited now to 16 millimeter Kodachrome 100-foot rolls.

83 A. Yes.

Q. Mr. Witness, I am asking you if you can answer the question by looking at Government's Exhibit 67.

A. Yes, they were included.

Q. That is not the question. How many?

A. Well, you are asking the question, the number of rolls?

Mr. Callaghan: Will you read the question, Mr. Reporter?

(Question read.)

The Court: What is your answer?

By The Witness:

A. 300.

By Mr. Callaghan:

Q. Now, do you know where the other 68 rolls were shipped?

A. Yes, as I said, there were a certain percentage of them, a certain number of rolls—

Q. If you know where the other 68 rolls were shipped, will you tell us, please?

A. I can only tell you in this fashion.

Q. You said you knew, do you know?

A. Well, I know from my records.

Q. Well, will you refer to your records and tell us, 84 where the 68 rolls were shipped?

A. They were shipped to Chicago.

Q. To whom in Chicago?

A. To J. E. Brulatour Company.

Q. Were those 68 rolls included in this shipment of July 8 on the same vehicle?

A. Yes.

Q. To a different consignee than the Eastman Kodak Company, is that so?

A. Yes, it was an enclosure.

Q. Sir?

A. What is known as an enclosure.

Q. Will you indicate for the court and jury for my edification, if you will, where on Government's Exhibit 67 it appears that there were 368 rolls of 16 millimeter Kodachrome film shipped?

A. That would not appear anywhere.

Q. It does not appear?

A. No, sir.

85 Q. You testified on direct examination you could tell from the waybill what this shipment comprised.

A. Did I?

Q. Yes.

A. I think in a general way, yes.

Q. In a general way.

Now, what other emulsion numbers are involved there in the various cartons and rolls of film that have been produced here in open court? Can you tell by inspection of any of the documents or by inspection of any of the exhibits here?

A. I haven't examined them, except these particular cases here as to emulsion numbers.

Q. Mr. Witness, is the 116 Verichrome film made from the same emulsion, or is the same emulsion used in the manufacture of the Verichrome?

A. No, it is not.

Q. Is the same emulsion used in the manufacture of the 8 millimeter Kodachrome film?

A. No, sir.

Q. Is the same emulsion used in the magazine film?

A. No, it is not.

Q. Do you have a record now presently, Mr. Witness, as to the total number of rolls of film which were
86 produced from an emulsion number 5268-176?

A. No.

Q. This number was used on 368 rolls, you say, included in this shipment, but the emulsion number was also used?

A. Will you give me the question again, please?

Q. I don't know which question you are talking about now. Do you want to explain some previous answer? You are talking about an emulsion number.

A. Yes.

Q. The only emulsion number I am talking about is 5268-176.

A. All right. What is your question, regarding it?

Q. You have testified here, if I understand your testimony correctly, that 368 rolls included in this shipment bore that emulsion number, is that true?

A. I think you are right.

Q. You will agree with that?

A. Yes, I think so.

Q. On how many other cartons of rolls of film manufactured by the Eastman Kodak Company at Rochester, New York, does a like emulsion number appear?

A. Well, there would be none except this particular film.

87. Q. Do you mean after these 368 films, 368 rolls of film, were manufactured that that emulsion number was then abandoned and not used again on any future film at all?

A. That is right.

Q. That is the fact?

A. Yes, sir.

Q. Do you have a record there in connection with this emulsion number 5268-176?

A. I have nothing to prove that except from my own personal knowledge of this particular film.

Q. You are not employed in the mixing room where this film is actually manufactured?

A. Of course I am not.

Q. Sir?

A. Of course I am not.

Q. How many employees does Eastman Kodak have in its Rochester, New York, plant?

A. About thirty thousand.

Q. You employ some fifty thousand people throughout your entire project, do you not?

A. That is right.

Q. Do you have a record of any other shipments that were made by the Eastman Kodak Company during the month of July, 1950?

88 A. To whom?

Q. To anyone whomsoever. Do you have any records with you—

A. Records here?

Q. Yes.

A. No, I haven't.

Q. Before leaving the Eastman Kodak Company to come here as a witness, did you examine the records of the Eastman Kodak Company for shipments of film to other persons during the month of July, on or about July 8, 1950?

A. Yes, I made some examination.

Q. Who is the person in charge of the plant at Rochester, who keeps track of the number of rolls of film that are made from a certain emulsion number or from a given emulsion number?

A. It all depends on the type of film involved. In other words, all film is not manufactured under the same supervision or in the same building.

Q. I see. There is not any one central supervising production man who would know the extent to which a certain emulsion was used on a given lot of film?

A. Well, you could probably find someone that would know that.

Q. Under whose supervision, for instance, was the
89 film manufactured that bears No. 5268-176?

A. The final responsibility would be the superintendent of film manufacture.

Q. Who would that be?

A. Well, it would be Mr. Otto Cook.

Q. Is that Cook, C-o-o-k?

A. That is right.

Q. Does he live in Rochester, New York?

A. He does.

Q. The number 0515 which is added to the emulsion number I am talking about, indicates what?

A. 15—

Q. 0515.

A. 05, the first two numbers, indicate the large roll from which this film, this small film, is slit. In other words, film coming off the production line comes in 40-foot rolls, and that is slit into the smaller 16 millimeter size, and the 05 indicates the roll number from which this particular film was slit.

Q. What does 15 indicate?

A. 15 indicates the packer who put it into the carton.

Q. The person who ultimately may be held responsible in the event there is something wrong with that packing?

It is an inspection proposition, the use of the 15, the 90 packer's number?

A. Yes, I should think so.

Q. How many rolls of film were manufactured bearing the emulsion symbol 5268-176-0515?

A. Just the amount that was shipped.

Q. How many?

A. The number of rolls?

Q. Yes.

A. I don't know. I will have to refer to my notes.

I am sorry, I haven't the total number of rolls. I don't know.

Q. How many rolls were included in this shipment?

A. There were 300. There were 300 100-foot rolls, and there was 60 400-foot rolls.

Q. And what millimeter film would that be?

A. That would be 16.

Q. Mr. Witness, can you tell by looking at any of the documents that have been marked for identification here as Government's Exhibits how many cartons of 116 Verichrome film were made by a given emulsion number?

A. No, I can't.

Q. What emulsion number, by the way, is indicated for the 116 Verichrome film about which you have testified?

A. What emulsion number?

Q. Yes.

91 A. I haven't testified concerning any emulsion number in connection with that particular type of film.

Q. Are you able to at this time?

A. No, I am not.

Q. Give us any emulsion number on the 116 Verichrome, give us any emulsion number on the 116 film.

A. Not without referring to the cartons.

Q. Would you do that, please?

A. Sir?

Q. You want 116—

A. 116 Verichrome film.

Q. 116 Verichrome film.

A. You want the emulsion number?

Q. Sir?

A. Is that what you are referring to? You want the emulsion number?

Q. Yes.

A. 7009-709-4.

Q. Say it a little more slowly.

A. 7009-709-4.

Q. Can you tell us how many cartons or cases—let us leave it by cartons—of the 116 Verichrome film were included in this shipment of July 8, 1950?

A. You want me to—

92 Q. Can you tell by looking at Government's Exhibit 67?

A. No, I can't.

Q. The waybill?

A. No, because the film is consolidated, so to speak, and all the types are together.

Q. Do you know or are you able to tell from any record that you may have in your possession, Mr. Witness, how many cartons of 116 Verichrome film were manufactured under the emulsion number 7009-709-4?

A. No.

Q. Will you refer to the records, please, Mr. Witness, and tell us how many cartons of 116 Verichrome film were included in this shipment?

I will withdraw that.

You have been referring to some memoranda and notes here. Will you tell the court and jury to what you refer?

A. In what connection, what particular?

Q. What notes are you referring to now in connection with this examination?

A. I am referring to notes made from our shipping records.

Q. None of those have been marked for identification in this case, have they?

93 A. No, not yet.

Q. Can you tell by an examination or inspection of Government's Exhibit 67 how many rolls of 8 millimeter Kodachrome film were included in the shipment of July 8?

A. I could tell you how many was shipped, but not from that.

Q. But not from Government's Exhibit 67?

A. No, because it is not itemized.

Q. In other words, this waybill gives us no information, does it, in detail of what this shipment consisted?

A. It doesn't give you in detail, no, sir.

Q. As I read it—and if I misread it, you correct me, because I am not familiar with these things—it indicates, does it not, that there were 598 boxes of film, is that right?

A. Yes.

Q. Without any designation of kind and character and nature or description of film?

A. That is correct.

Q. The other articles and things described in this bill of lading, were those shipped from the Eastman Kodak Company: One box of toilet preparation?

A. That is right.

Q. One box of paper labels?

94 A. Correct.

Q. One box of paper envelopes?

A. Correct.

Q. Two boxes of motion picture film developing outfit parts?

A. That is right. You understand that this is not an invoice. This is for freight.

Q. I understand, this is a bill of lading for the carrier, is that so?

A. Yes, so we are involved only in total weight. That is why it is not in detail.

Mr. Callaghan: I move that be stricken as a voluntary response of the witness.

The Court: Motion denied.

By Mr. Callaghan:

Q. 1727 Indiana Avenue is your wholesale point in Chicago, isn't it, Mr. Vayo?

A. That is correct.

Q. And that is the place from which distributors are supplied?

A. Our dealers are supplied.

Q. Your dealers and your distributors are supplied over there?

A. Our dealers. We have no distributors. We are
95 our own distributors.

Q. Well—

A. With the exception of motion picture film.

Q. Sir?

A. With the exception of professional motion picture film.

Q. It is the place to which the factory ships your merchandise before it gets into the outlet of the trade?

A. That is right.

Q. I wish you would advert to the cartons here that contain in the shipment magazine film. Will you please, Mr. Vayo—

A. What do you want me to do with it?

Q. Look at the cartons that you say contain the magazine film.

A. Yes.

Q. What numbers are those?

Do you know, Mr. Downing? Are they 17 to 63?

Mr. Downing: They are included within that group, yes. Some are roll and some are magazine type.

The Witness: These are all roll film.

Mr. Downing: These are roll film.

The Witness: These are rolls.

96 Mr. Downing: I don't think there are any magazine type in here.

The Witness: No, I don't think so.

By Mr. Callaghan:

Q. We do not have in court here any cartons containing or that theretofore had contained any magazine film, do we?

A. I don't see them.

Q. Mr. Witness, this emulsion No. 5268-176, that was all movie film, was it?

A. It was 16 millimeter movie film, yes, but used only as—

Q. Is this sometimes referred to as professional film rather than amateur?

A. That particular film is professional film. Professional film can come either in the 16 or 35 millimeter size.

Q. When merchandise such as this is shipped to 1727 Indiana Avenue, your plant at 1727 Indiana Avenue, is a charge made from Rochester against the plant at 1727 Indiana Avenue?

A. Yes, but not by—

Q. You have answered my question by saying yes.

A. Yes, a charge is made.

97 Q. And that charge is made for the entire shipment?

A. That is right.

Q. Will you tell us now what charge was made to the Indiana Avenue plant for the film that was involved in this shipment?

A. I can't in total, no. I haven't the—

Q. Do you have any figures there that would indicate?

A. I haven't in total.

Q. Who would have those figures?

A. Rochester would have them.

Q. Would your plant at Indiana Avenue have them?

A. That I can't tell you, whether they have them now or not.

Q. If they were in existence, the charge being made from Rochester to Chicago, who at 1727 Indiana Avenue plant would have those figures?

A. The manager of the plant.

Q. Who is that?

A. Well, I am not sure whether he would have them or not. Mr. Hill is the manager of the plant, but I am not sure whether he would have them at this time.

Q. Is that Hill, H-i-l-l?

A. That is right.

Q. May I see the book to which you adverted a little while ago when we were discussing prices of the films? You had a book that had some real coloring in it.

A. Yes.

Q. Will you turn to the page to which you adverted at the time you testified as to price?

A. They are all over. You will have to tell me the type of film, and I will show you the price.

Q. May I look at that just a moment so that I can know what I am talking about when I ask the questions?

May I have a moment to examine this, Judge?

The Court: You may.

The Witness: The films are all on the front of it.

By Mr. Callaghan:

Q. I just noted that.

Mr. Witness, on your direct examination you testified after examining the document which I hold in my hand called a condensed price list 1949 wholesale of Eastman Kodak Company, Rochester, New York. Did those same prices prevail in July of 1950?

A. They did.

Q. And how long after July of 1950?

A. I would say approximately six months.

Q. How long prior to July of 1950?

99 A. That I can't tell you definitely as to what time in the middle of 1949.

Q. Will you show me the page from which you gave your testimony on Mr. Downing's direct examination?

A. Well, you give me the film that you are concerned with and I will give you the price.

Q. Mr. Downing asked you about the price of 16 millimeter film.

A. What type of 16 millimeter film? There are many types.

Q. Do you remember what type he asked you about? I don't. He asked you about 16 millimeter Kodachrome, I believe.

Mr. Downing: Commercial Kodachrome.

The Witness: Commercial Kodachrome are you talking about?

By Mr. Callaghan:

Q. Yes.

A. It is not in here.

Mr. Walsh: I move to strike all this testimony about commercial Kodachrome 116 because the indictment only charges or mentions 11 cartons 116 Kodak film. It does not say anything about Kodachrome.

100 Mr. Downing: We are talking about 16 and not 116.

The Court: Motion is denied.

By Mr. Callaghan:

Q. You said 16 millimeter Kodachrome is not in that book?

A. Commercial Kodachrome?

Q. Yes.

A. No, it is not.

Q. From whom did you get the figure about which you testified about the commercial Kodachrome?

A. From the basis of our invoicing to J. A. Brulatour, which I have here.

Q. J. E. Brulatour was a co-consignee of this shipment, is that right? Is that the name of the co-consignee?

A. Yes.

Q. Some of this merchandise was going to Brulatour?

A. It was an enclosure.

Q. And some of it was going to 1727 Indiana Avenue?

A. That is right. The bulk of it was going to our own house, and there were some other, what we call, enclosures or drop off shipments to other people, small shipments, and one of them was Brulatour.

Q. Is Brulatour one of your agents?

101 A. He is sole distributor of motion picture film in the United States.

102 Q. Now, do you have any document or any price list of the Eastman Kodak Company with you now, telling us the cost or the price of that 16 millimeter commercial film?

A. Yes, I have the original records from which the charge was made.

There is one lot. (indicating); there is another lot, and those are the 100-foot rolls, and this is the 400-foot rolls. Here is the price per foot, and the extension, and the total value of the film. Of course, this side of them is eliminated because it concerns his commission.

Q. How much did Brulatour send for the commission?

A. What did what?

Q. What did Brulatour send to the Eastman Kodak Company in connection with these invoices; how much?

Mr. Downing: If your Honor please, I am going to object. It is not definite whether it is money, film, or whatever it might be.

The Court: Are you asking the price?

Mr. Callaghan: Yes, what did they send him in dollars.

The Court: Well, if he knows, he may answer.

By The Witness:

A. Well, presumably they sent him the amount that 103 was billed.

By Mr. Callaghan:

Q. Do you know, Mr. Witness?

A. Of course, I don't know. I don't get the money.

Q. And Brulatour gets a discount, does he not?

A. That is right.

Q. Of how much?

A. That varies again.

Q. That discount, in some instances, amounts to 40 per cent, doesn't it?

A. No, it does not.

Q. What is the highest it amounts to?

A. I don't know. I know it is not 40.

Q. You say it is not 40, and yet you don't know what it is. Is it 30?

A. No, I should think 8 per cent.

Q. Eight per cent would be the most Brulatour would get off?

A. I should think so.

Q. And Brulatour pays the bill, less 8 per cent. Do you undertake to develop the film, free?

A. No, we don't.

Q. No?

A. No.

104 Q. Does the charge that is made to the Brulatour company include an excise tax?

A. No.

Q. Does it include any service charge?

A. No, it does not.

Q. For handling?

A. No.

Q. Brulatour company, by the way, have offices in your plant at 1727 Indiana Avenue, don't they?

A. They don't at the present time; they did.

Q. They did in July of 1950?

A. That's right.

Q. That was the only part of this shipment that is set forth on Government's Exhibit 67 that went to the Brulatour company, was the commercial film?

A. That's right.

Q. Was any of that commercial film consigned to the Eastman Kodak Company?

A. No.

Q. How many cartons, Mr. Vayo, of this commercial Kodachrome film were consigned to Brulatour?

A. I think I testified that there were—I don't know unless I refer to my notes. You have got the shipping tickets right there. All I have to do is add them up.

105 Q. Can you tell by looking at these exhibits, Government's Exhibits 74, 75, 76 and 77, for identification?

A. There are one, two, three, four, five, six cases here.

Mr. Downing: Let the record show the witness is pointing to Government Exhibit 76.

By Mr. Callaghan:

Q. Now, do you use "cases" and "cartons" synonymously?

A. That's right, they are one and the same thing.

Q. Because in your direct examination you referred to a little box that had one film in, as a carton of film?

A. Well, that is a carton, but those are cartons or cases.

Q. Well, these are more properly described as cases, are they not? By "these," I mean all of these large cardboard items that we have here?

A. Well, it could be cases or cartons.

Q. And the little caddy which Mr. Walsh has before him here, that is probably a carton?

A. That is what we call the shelf carton.

Q. Now, may I look at Government Exhibit 76?

A. Yes.

Q. Is everything shown on Government Exhibit 76 106 the entire shipment of Kodachrome commercial film?

A. May I see those?

Mr. Callaghan: Sure.

The Witness: This does not include—

By Mr. Callaghan:

Q. By "this," you mean Government Exhibit 76?

A. Government Exhibit 76 does not include 64 100-foot rolls. It covers 300 rolls, 100-foot rolls of this particular type film.

Q. By "this particular type film," you refer to the Kodachrome commercial?

A. That's right.

Q. Now, was any Kodachrome commercial film consigned to the Eastman Kodak Company?

A. No.

Q. Will you show us the box, Mr. Witness, or the cases which contain the 116 Kodak film?

A. Right here (indicating).

Q. By "right here," you indicate—

A. This lot right here (indicating), I believe is of 116. Is that right?

Mr. Downing: Government Exhibits 6 to 16, inclusive.

By Mr. Callaghan:

107 Q. What is the difference between 116 Kodak film and 116 Verichrome film?

A. Well, it is a different type of film.

Q. Do you have any cartons here which contain the Verichrome film?

A. 116 is a Verichrome film.

Q. Well, did these cartons, these cases, Government Exhibits 6 to 16, inclusive, contain a Kodak film or Verichrome film?

A. Well, Verichrome film is Kodak film.

Q. Well, is all Verichrome film Kodak film?

A. Yes.

Q. Is all Kodak film Verichrome film?

A. No, not necessarily.

Q. Do you know what the emulsion number was that is on the outside of Government Exhibits 6 to 16, inclusive?

A. Only from reading on the carton.

Mr. Downing: This is repetitious. We have been over it once.

The Witness: That is there.

Mr. Callaghan: I submit he has not been over it before. This is entirely different. I asked him about something else before.

By Mr. Callaghan:

108 Q. The emulsion number then which is involved on this Verichrome film is 6009-512-7, is that so?

A. Well, that is what you are reading; I don't know.

Q. You see if I read it.

A. 6009-512-7.

Q. Is there an "H" after that, or something?

A. It is a blob. Let's take a look at another one.

Q. Now, this has a different number on it, does it, Mr. Witness? By "this," I mean Government Exhibit 6.

A. 7009.

Q. It is different by a thousand?

A. Different by a thousand.

Q. Is this 6009 and this 7009 the same emulsion?

A. It is quite possible. It could be a different batch or a different roll from which it is cut.

Q. Do you have a record there now which indicates how many rolls of Kodachrome was made in emulsion 6009-512-7?

A. No.

Q. Maybe thousands of film were made from that emulsion?

A. Probably yes.

Q. And many, many hundred cases were made from that same emulsion number?

A. Likely.

109 Q. And likely it is many, many hundred cases of that emulsion was shipped from the plant in the month of July, out of your plant at Rochester, New York?

A. It is possible.

Q. To all various parts of the United States?

A. It is possible.

Q. And if I were to ask you the same questions with reference to emulsion 7009-4, would your answers be the same as to that emulsion number?

A. I think so.

Mr. Callaghan: Here is one I cannot read. If you will look at it, Mr. Downing, we will interpret it together. It looks like 7009-837-39.

The Witness: There may be a number on the reverse side.

Mr. Downing: Well, be guided by Mr. Vayo.

The Witness: 700—907—35.

By Mr. Callaghan:

Q. That is also another emulsion number?

A. Yes.

Q. If I were to ask you the same questions with reference to the number of cases or the film made in that emulsion, your answer would be the same as given to me 110 when I asked you about 6009-512-7?

A. Yes.

Q. Well, to save time, if it appears that various emulsions appear on the outside of these cases that have been identified here as government exhibits—do you understand me now?

A. Yes.

Q. That different numbers appear on the various of these cases, would your answer be the same were I to ask you the same question concerning each case?

A. With the exception of commercial Kodachrome.

Q. With the exception of the commercial Kodachrome?

A. That's right.

Q. Wherever the other cases may vary or differ in number, your testimony would be, as to each, that there may be hundreds of cases of those films made under that emulsion number shipped out to all parts of the U. S. during this period involved in this testimony?

A. With the exception of commercial Kodachrome.

Q. Now, will you look at the book to which you referred in connection with the values you have testified to here, Mr. Vayo? Will you refer to it again, please?

A. What is the question?

Q. Sir?

111 A. What is the question?

Q. Well, you get the book out, first, and I will get the question ready.

Will you look at the page that has to do with the value of the 116 Verichrome film?

A. Here it is.

Q. Sir?

A. Here it is.

Q. Now, the price you have given us on your direct examination, Mr. Witness, was your list price, wasn't it?

A. The retail price.

Q. The price at which the Bass Camera Company or the Walgreen Drug Store sells that merchandise?

A. That's right.

Q. Now, there are some figures in red opposite the No. 116 film?

A. Yes.

Q. Verichrome film?

A. That's right.

Q. And that figure or figures are awfully fine. The first column is headed "Basic net"?

A. That is the net wholesale price.

112 By Mr. Callaghan:

Q. What was that price?

A. That is the price that it was sold to the dealer.

Q. And what is that?

A. For this particular film?

Q. Yes.

A. \$30, I believe, or \$30 for 100 rolls.

Q. \$30 for 100 rolls?

A. Yes.

Q. For a case of 100 rolls?

A. For a case of 100 rolls, yes, sir.

Q. Now, what is the figure around which you have a circle in the right-hand column?

A. That is the list price or the retail price per roll. 49 cents per roll.

Q. Or it would be \$49 for 100 rolls, or a case?

A. Yes.

Q. What was the basic net figure that you gave me before?

A. \$36.

Q. A difference of \$19 a case, is that so?

A. Yes.

Q. You gave us a figure of 147 in connection with the 116 film, didn't you?

113 A. I think that was the figure.

Q. Upon what did you base that figure of \$147?

A. Well, it was based on the retail value.

Q. For how many rolls?

A. For 100 rolls.

Q. For a hundred rolls?

A. Yes.

Q. Well, maybe it is my inability to comprehend. I just understood you to say that 100 rolls would cost the retailer \$49, but that the net price was \$30. Do we understand each other?

A. \$30 per 100 rolls.

Q. \$49 is the retail price?

A. You are going back to the testimony that I gave as to the value. I will have to refer back to my notes as to the value.

Q. Well, let's talk about the value from this document for just a moment. We are concerned with 116 Verichrome film, and your testimony now is that the net price of that film is \$30 per case of 100 rolls?

A. Per case of 100 rolls, at \$30.

Q. Now, where did you get the figure of \$147 in connection with the 116 Verichrome film that you gave on direct examination?

114 A. Well, I will have to refer to my notes, if I may, so that I can tell you. Perhaps I have made an error.

The Court: Refer to your notes.

The Witness: What?

The Court: You may refer to your notes.

Mr. Callaghan: Does Your Honor want to suspend for the noon recess while he looks at his notes? It is 12:20.

The Court: No. We will go to 12:30.

The Witness: Well, as a matter of fact, there were 300. That was figured on the basis of 300 rolls per case. That makes quite a difference.

By Mr. Callaghan:

Q. Well, are there 300 rolls to the case?

A. There can be.

Q. Were there 300 rolls in one of the cases?

A. There were 300 rolls per case involved in the shipment. Those were 300 roll cases.

Q. That is, in each one of these cartons? Strike that. Each one of these cartons that has been marked as Government Exhibits 6 to 16, inclusive, those are 300 rolls to the case?

A. That is right. That is marked right there.

Q. So, that for 300 rolls, you will triple your figure
115 that you gave me in your answer on cross examination,
so that your net price was \$90; three times 30, is that
right?

A. That is right.

Q. And the price to the dealer would be three times 49
or \$147? That is how we get \$147?

A. That is right.

Q. Now, included in that price that you gave of \$49 to
the dealer, there is included an excise tax, is there?

A. Yes, it includes a tax.

Q. How much of an excise tax is included in that price
of \$49, which you said was part of the value here?

A. I am not positive; I can't state.

Q. Do you know percentagewise?

A. I imagine it is around 10 per cent.

Mr. Callaghan: I move that that be stricken. It is
based on his imagination. I am not asking for his imagina-
tion.

The Court: The answer may stand for what it is worth.
Obviously, that is the best that he can give you.

Mr. Callaghan: Well, I move to strike it out.

The Court: Your motion is denied.

Mr. Callaghan: He is basing it on his imagina-
116 tion.

The Court: Proceed.

By Mr. Callaghan:

Q. Now, where in that book will you find the magazine
film to which you referred?

A. What type of magazine?

Q. You testified that there were magazine film, 50 maga-
zines to the case.

Mr. Downing: The question I asked was predicated up-
on the type. I submit that if Mr. Callaghan—

Mr. Callaghan: He testified as to the magazine film;
there were 50 magazines to the case, which was worth
\$252.50.

Mr. Downing: The question was predicated on 8 milli-
meter.

The Court: 8 millimeter. Very well.

The Witness: 8 millimeter?

25 foot magazine, is that what we are talking about?

Mr. Downing: That is right.

The Witness: What do you want, the price?

By Mr. Callaghan:

Q. I want to know from where you testified—first,
117 you testified from page 4 of this book that you hold
in your hand, is that so?

A. That is right.

Q. Will you show me from which column you testified?

A. Here is the list price.

Q. The list price is what?

A. \$5.05 a roll or magazine, I believe.

Q. \$5.05 a roll?

A. Yes.

Q. What is the other price?

Mr. Downing: If your Honor please, I submit that counsel is leaning right over the witness. The gentlemen is perfectly capable of hearing.

Mr. Callaghan: Now, counsel, I am trying to get along. I am trying a lawsuit.

The Court: If he annoys you, say so, Mr. Witness.

The Witness: He is not annoying me. After all—

Mr. Downing: It certainly is not helpful.

The Witness: It is not helpful.

The Court: Go ahead.

Mr. Callaghan: Well, you are not trying to be helpful, in the first place.

118 Mr. Downing: I object to that and ask it be stricken out.

The Court: Strike it out.

Mr. Callaghan: That was responding to a voluntary statement by counsel that I was not helpful.

By Mr. Callaghan:

Q. Will you tell us the price, that price in the first column? Is that the basic net price of that film?

A. \$3.29.

Q. As compared with the figure on the extreme right, which is what?

A. \$5.05.

Q. Now, is there an interim figure there between those two figures, is there a figure?

A. No. —

Q. Now, was all that magazine film consigned to the Eastman Company or was it consigned to Brulatour?

A. No. It all went to the Eastman Kodak Company.

Q. How many cartons were consigned to the Eastman Kodak Company?

A. I have to refer to my records again.

Mr. Walsh: Let us see what he does refer to.

The Witness: There were 4,000.

119 By Mr. Callaghan:

Q. Sir?

A. Eighty cases.

Q. Four thousand?

A. Four thousand magazines, which means that there were 80 cases, or 50 there to the case.

Q. There were 80 cases in this one shipment?

A. Yes, 80 cases were shipped.

Q. Will you tell me the cartons that will make up these 80 cases, please?

A. No, I can't show you the cartons.

Q. Are they here in court?

A. I don't know. I would not say that they are. From what I can see, not all of them.

Q. Will you step down and find any of them?

A. We were looking, and we could not find them.

Q. Well, there are not any?

A. There is nothing here that I can find.

Mr. Callaghan: This has gotten to be an obstacle race, Judge, to get up there to the witness.

The Court: Move them over.

By Mr. Callaghan:

Q. Are these films, Mr. Vayo, a fair trade item?

120 A. I don't know.

Q. You don't know the price at which those films are sold in Chicago, do you?

A. No, I don't.

Q. That is true of all these films about which you have testified?

A. Oh, generally. After all, I know that the films—

Q. Aren't you familiar with Chicago market as to how such films are sold in Stineway or Walgreen's drug stores?

A. No, but I am familiar with what the prices are to the Eastman Company stores in Chicago.

Q. You are familiar with what the books show, is that right?

A. Well, that is quite a lot.

Q. As to whether it is quite a lot or quite a little, is that your answer?

A. Yes.

Q. What is shown in that 1949 price list?

A. That is right.

Mr. Callaghan: That is all.

The Court: You will take up your cross examination at 2 o'clock this afternoon.

We will recess until 2 o'clock.

121 (The trial in the above-entitled cause was recessed until 2 o'clock p.m. of the same day, namely Tuesday, May 29, 1951.)

122

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 50 CR 641) * *

Before Judge Campbell
and a jury.

Tuesday, May 29, 1951,
2 o'clock p. m.

Trial resumed pursuant to recess.

Present:

Mr. Robert J. Downing,
for the Government;

Mr. George F. Callaghan,
for defendant Gordon;

Mr. Maurice J. Walsh,
for defendant MacLeod.

CHARLES H. VAYO, resumed the stand and testified further as follows:

(Whereupon, the following proceedings were had in the presence and hearing of the jury:)

Mr. Walsh: Incidentally, there are no witnesses in the courtroom, are there?

Mr. Downing: Not to my knowledge, I cannot see behind there, but from what I see—except Mr. Mehegan.

Mr. Walsh: Yes.
123 The Court: All right. You may commence the cross examination on behalf of the defendant MacLeod.

Cross Examination

By Mr. Walsh:

Q. Mr. Vayo, is this company, this plant here in Illinois, this Eastman Company here in Illinois, is that the same corporation that is in Rochester, New York?

A. Yes.

Q. What is the name of that corporation?

A. Eastman Kodak Company.

Q. Eastman Kodak Company, and that company is, I suppose, qualified to do business in Illinois by the Secretary of State?

A. Yes, that is right.

Q. And Mr. Hill is the manager?

A. Manager of the Chicago branch.

Q. Your position is that of traffic manager?

A. I am the general traffic manager, not the traffic manager. We have traffic managers all over our—

Q. For each different plant?

A. Yes.

Q. But you are for the entire organization?

A. Yes.

Q. Plus all of the subsidiaries?

124 A. That is right.

Q. Are there any subsidiaries here in Chicago?

A. Yes, the Taprell Loomis.

Q. Taprell Loomis?

A. Taprell Loomis.

Q. Do they deal in this film about which you have been talking?

A. Nothing to do with film.

Q. Are there any subsidiaries in Chicago that deal with this film about which you have been talking?

A. No, sir.

Q. As general traffic manager in charge of all the traffic for the company throughout the world—is that right?

A. That is right.

Q. Do you have personal knowledge of the records as they are made day by day?

A. Many of them.